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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/110,694	07/07/1998	RANDELL L. MILLS	9113-19-CI5	5009
7590	03/12/2007		EXAMINER	
FARKAS & MANELLI 2000 M STREET N.W. 7TH FLOOR WASHINGTON, DC 200363307			KALAFUT, STEPHEN J	
			ART UNIT	PAPER NUMBER
			1745	
			MAIL DATE	DELIVERY MODE
			03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/110,694	Applicant(s) MILLS, RANDELL L.
Examiner Stephen J. Kalafut	Art Unit 1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on 01 February 0137. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See body of action.
 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. Other: _____.

Applicant's arguments filed 13 February 2007 have been fully considered but they are not persuasive.

Applicant argues (page 153) that the data of Cvetanovic *et al.* support his RTM. On page 7, in the right column of their article, Cvetanovic *et al.* list the precise data which, according to them, cannot be explained by RTM. To summarize, these include “different line shapes recorded end-on and side-on”, the “large contribution” of hydrogen atoms having energies two orders of magnitude larger than electron temperature, “the increase in profile width with the decrease of discharge pressure”, “spatial inhomogeneity of the excessive broadening” and “throughout the negative glow, the intensity of the excessively broadened part of line profile decreases exponentially”. The data equivalent to that shown by applicant may be explained by other conventionally known mechanisms, as shown by Luggenhölscher *et al.*, cited in paper no. 20050504, and Luque *et al.*, cited in the IDS of 14 November 2005.

Applicant argues (page 154) that the text of Cvetanovic *et al.* “contains some clear misrepresentations”, specifically that while the broadening of Figure 4c appears to be larger than that of Figures 4a and 4b, because Figure 4c was “printed in a larger format”, but is actually “virtually identical” to the broadening shown in figures 4a and 4b. Figure 4c is on a somewhat smaller scale than the other two figures. However, the data shown in figure 4c shows more asymmetry than seen in the other two, as well as a profile shape that deviates more from convex.

Applicant argues (page 155) that EarthTech is his competitor, and thus that “their results can not be considered without bias”. EarthTech International is an organization whose activities deal with investigating aspects of the Zero-Point Field, but also evaluate what they call “over-unity” energy devices, and have attempted to test one of applicant’s devices. See the website

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www.earthtech.org. Applicant does not point out what specific activity of EarthTech is in competition with his own. If applicant considers EarthTech's attempt to test his device to be a competitive act, then the "independent third parties", of whom applicant argues (pages 71 *et seq.*) have generated data that supports his alleged lower energy states of hydrogen, must also be considered applicant's competitors. Here, applicant appears to say that the results supporting him must be considered, while results that do not support him are from "competitors", and must be dismissed as biased.

Applicant argues (pages 156-157) that Barth (cited in the IDS of 26 July 2005) is mistaken when stating that applicant has overlooked electromagnetic attraction between the nucleus and the electron, since this attraction is taken into account by the force balance equation (1.232). Barth is specifically referring to the wave equation, which is commonly used to represent traveling waves such as sound waves, and is used by applicant to describe the electron's "charge density function", as not containing any term for the electromagnetic attraction.

Applicant argues (pages 162) that "the Committee's argument regarding the stability of the hydrogen atom according to the HUP as applied by Krieg has no basis in fact, as shown thirty years ago by Lieb in the paper" entitled "The stability of matter" (emphasis applicant's). Applicant then asserts (page 163), "the approach by Feynman and Lieb are physically baseless". Thus, applicant first appears to rely on Lieb, and then faults him for his approach.

Applicant argues (page 165) that the "Committee's excuse of not having Dr. Rathke's cited references as a basis for ignoring his obvious misrepresentations is a clear adoption of the fraud perpetrated by Dr. Rathke" and that "Dr. Rathke's citations are not necessary to understand

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the misrepresentations made by him". The first point is analogous to saying that a prosecutor who does not have the evidence to determine if a crime has been committed has become an accomplice to the alleged crime. Regarding the second point, the relevant question is not understanding the alleged misrepresentations, but determining if in fact they have been made. In order to determine if a sign has been changed in an equation, one must first read Dr. Rathke's presentation of the equation and then compare it to the original in applicant's work. This cannot be done if Dr. Rathke's presentation is not available.

Applicant argues (page 166) that the "Committee" has failed to account for energy being transferred to the catalyst when calculating the energy values for the variable "q", which is a multiple of -13.6 eV. This is not persuasive because this would involve transfers of energy that the "hydrino", as postulated by applicant, cannot undergo. For example, $q = 4$ when $p = 2$, and $q = 9$ when $p = 3$. A hypothetical change of energy of $q = 5$ occurs when p changes from 2 to 3. Since the energy levels experienced by the electron of a hypothetical hydrino must exhibit one of these values of q , the change in energy cannot be "split" between the two values. Moreover, if one were to take into account catalyst enthalpy, and allow the difference in q to be "split" between energy given to the catalyst, which is allegedly transferred in multiples "m" of 27.2 eV, corresponding to a change in q of $2m$ (since 27.2 eV is itself $13.6 \text{ eV} \times 2$), and energy given off as a photon, one would still expect an emission of energy corresponding to $q = 5$, which is not observed by applicant. This is because the overall change in energy between $p = 4$ and $p = 5$ would be the difference between $q = 16$ and $q = 25$, or a change of $q = 9$. Taking into account energy transferred to a catalyst at $2 \times 27.2 \text{ eV}$ (or $m = 2$), which also corresponds to $q = 4$, one would expect the remainder to be a change in q equaling 5.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 17-00